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| 09/525,083 | 03/14/2000 | David Brian Edwards | 99-0271-UNI | 9057 |

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| EXAMINER |
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HARMON, CHRISTOPHER R

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| ART UNIT | PAPER NUMBER |
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3721

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Please find below and/or attached an Office communication concerning this application or proceeding.



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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Paper No. 25

Application Number: 09/525,083
Filing Date: March 14, 2000
Appellant(s): EDWARDS ET AL.

Rimma Mitelman
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/24/02.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is substantially correct. The changes are as follows: Only issues II and III exist.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-10 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1 and 5-10 are rejected under 35 U.S.C. 102(e) as being anticipated by Dickler et al. (US 6,037,319).

Dickler et al. discloses water-soluble packets containing liquid cleaning concentrates for release upon dissolution comprising “two sheets, sealed together at the edge regions...preferably, by heat sealing.” (column 3, lines 27-30). The shape of the package is disclosed as “in the form of a bag or sachet” (column 3, lines 24-25). A

packet in the form of a bag made from two flexible sheets filled with liquid as disclosed by Dickler would "generally" take on a dome shape.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dickler et al. (US 6,037,319).

Dickler et al. discloses the claimed invention except for height/width ratios as described in claim 2. It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate such ratios, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Allen*, 105 USPQ 233.

Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dickler et al. (US 6,037,319).

Dickler et al. does not specifically disclose a circular or oval shaped base. However, it would have been an obvious matter of design choice to include a package with a generally circular or oval shaped base since applicant has not disclosed that a

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circular design solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with its described dimensions.

(11) Response to Argument

Applicant's arguments filed 12/24/02 have been fully considered but they are not persuasive. The claimed invention is directed towards a water soluble package, a product of a manufacturing process. The water soluble package described by Dickler et al. is identical except for the process in which it is made. However, the actual process of manufacturing the water soluble package has no bearing in the product claims.

Regarding the argument that Dickler does not disclose thermoforming, the method step of thermoforming the sheets, claim 1 line 3, is considered a process limitation in a product claim. Note that product-by-process claims are not limited to the manipulations of the recited steps, only the structure implied by the steps; see MPEP 2113 and *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966. Thermoforming is one of various ^{methods} ~~ways~~ of manufacturing the claimed product.

Regarding the argument that Dickler does not teach a dome shape, Dickler describes a packet made from two sheets sealed along the perimeter and filled with a liquid. Sheets of polyvinyl alcohol are flexible and would "generally" take on a dome shape when filled with a liquid.

For the above reasons, it is believed that the rejections should be sustained.

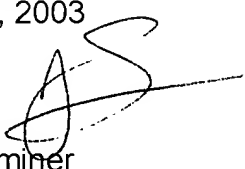
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Respectfully submitted,

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January 13, 2003

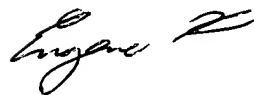
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